UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

DAVID BRYSON — CASE NO. 97-60061

Debtor

L. DAVID ZUBE, Trustee

Plaintiff

vs. — ADV. PRO. NO. 97-70229A

STEVEN MC DERMOTT
DAVID BRYSON

Defendants

STEVEN MC DERMOTT

Defendant and
Third Party Plaintiff

vs.

WILLIAM E. BAIER
FAYE BAIER

Third Party Defendants

APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Presently before the Court are cross motions for summary judgment filed by the Chapter 7 Trustee, L. David Zube ("Trustee"), and Third Party Defendants William and Faye Baier (collectively, "the Baiers"), both arising in an adversary proceeding commenced in the bankruptcy of David Bryson ("Debtor"). In a motion filed April 27, 1998, Trustee seeks summary judgment in the adversary proceeding against Debtor and Steven McDermott ("McDermott") to avoid an alleged security interest held by McDermott in a 1984 Ritz-Craft Craftsman Deluxe mobile home under the provisions of § 544(a) of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code"). In the cross motion filed on May 7, 1998, the Baiers seek summary judgment granting equitable reformation of an instrument concerning the mobile home executed by the Baiers and Debtor on or about January 3, 1995.[1]

The Court heard oral argument on the cross-motions at its regular motion term on May 12, 1998, in Binghamton, New York. The parties were given the opportunity to submit memoranda of law, and the matter was submitted for decision on June 1, 1998.

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[1] While styled as a "Cross Claim," it appears from a reading of the Baiers' Third Party Answer that they actually assert a counterclaim against the Trustee and the Debtor.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this adversary proceeding pursuant to 28 U.S.C. §§ 1334, 157(a), (b)(1), (b)(2)(A), (K), and (O).

FACTS

The following facts are not in dispute.[2] On or about January 3, 1995, Debtor acquired from the Baiers an interest in a 1984 Ritz-Craft Craftsman Deluxe Mobile Home, serial number 0106845351. This transaction was evidenced by a contract, the authenticity of which is not in dispute, which was entitled "MOBILE HOME INSTALLMENT SALE CONTRACT" ("Contract") and contained the following salient provisions:

> 1. Paragraph one recited that "[t]he Seller agrees to sell to the Buyer and the Buyer agrees to purchase from the Seller" the mobile home.
>
> 2. Paragraph two set a purchase price on the mobile home of $20,000, with a $4,000 down payment acknowledged, and the balance to be paid in monthly installments until the year 2005.
>
> 3. Paragraph four granted the Seller a security interest in the Mobile home, and authorized Seller to "sign financing statements or any other documents necessary for perfecting Seller's security interest created under this Agreement."

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[2]The Trustee filed a Statement of Material Facts ("Statement") on April 27, 1998, pursuant to 7056-1 of the Local Rules of Bankruptcy Practice for the Northern District of New York. On May 7, 1998, the Baiers filed a "Cross Statement of Material Facts" ("Cross Statement") indicating their agreement with the Statement and also supplying additional material facts. The Court notes that McDermott failed to indicate his position with regard to the Statement or the Cross Statement.

> 4. Paragraph twelve gave the Seller the option to accelerate the principal due upon default, and to "retake possession of the mobile home and sell the same according to law, and require Buyer to pay the contract balance remaining after sale together with the expenses of repossession and sale."
>
> 5. Paragraph fifteen was an integration clause, stating that the contract "represents the complete agreement between the parties and cannot be changed except by an agreement in writing signed by both parties."

See Exhibit "A" of the Trustee's Complaint, filed August 18, 1997.

On or about August 30, 1996, the Baiers executed a Bill of Sale which purported to sell the mobile home to McDermott for $14,295.18, along with an assignment of their right to payment under the contract with Debtor who, thereafter, made four payments to McDermott. Neither the Baiers nor McDermott ever perfected a security interest in the mobile home.

On January 6, 1997, Debtor filed a voluntary petition seeking relief under chapter 7 of the Code. The Trustee commenced an adversary proceeding against McDermott on August 18, 1997, seeking to avoid the alleged security interest in the mobile home pursuant to Code § 544(a).[3] As an affirmative defense, McDermott asserts that he has actual title to the mobile home, and that his rights are, therefore, not subject to avoidance under the Code. *See* McDermott's Answer at ¶¶ 4-5. By way of a counterclaim, McDermott demands an accounting of all payments made to the Trustee and the disgorgement of the same. *See id*. at ¶ 12.

On September 12, 1997, McDermott filed a third-party complaint ("McDermott's Third-Party Complaint") against the Baiers alleging a breach of warranty in the Bill of Sale. The Baiers filed an answer to the Third-Party Complaint on November 24, 1997 ("Baiers' Third Party

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[3]The Trustee indicated in his Complaint that the Debtor "is a necessary party." *See* Complaint at ¶ 2. Upon review of its docket, the Court notes that the Debtor did not file an answer to the Trustee's Complaint.

Answer and Counterclaim").[4] As an affirmative defense to McDermott's third party complaint and as a cross-claim against the Trustee and the Debtor, the Baiers allege that they are entitled to reform the contract so as to conform with the parties' alleged original intention, which was that title would remain with the Baiers until the Debtor completed payment. *See* Baiers' Third-Party Answer and Counterclaim at ¶¶ 6, 12-15, 20-24. On February 2, 1998, McDermott filed a reply to the Baiers' Third-Party Answer and Counterclaim seeking a dismissal of the counterclaim or in the alternative a reformation of the Contract.

ARGUMENTS

The Trustee argues that, as a matter of law, the Contract is an instrument of sale. Thus, the Baiers retained only a security interest in the mobile home, which is subject to the Trustee's avoiding powers unless it is perfected. McDermott and the Baiers each assert that all parties to the Contract originally understood that title would not pass until all payments were completed. Since there was a meeting of the minds that was not accurately reflected in the written instruments, the parties are entitled to the equitable remedy of reformation. As owners of the mobile home, the Baiers would not have been required to perfect their interest, and McDermott's interest as successor in title cannot be avoided by the Trustee. McDermott and the Baiers further argue that evidence of this unwritten agreement is admissible under the mutual mistake exception

[4]Upon review of its docket, the Court notes that the Baiers' answer and counterclaim of November 24 was not accompanied by an affidavit of service on the Trustee or the Debtor. On January 21, 1998, the Baiers refiled the answer and counterclaim along with an affidavit of service on McDermott, Trustee, and Debtor.

to the parol evidence rule.

DISCUSSION

I. Trustee's Motion for Summary Judgment in Avoidance Action

Summary judgment is to be granted if there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law. Federal Rules of Civil Procedure Rule 56(c) ("Fed.R.Civ.P."), incorporated by reference in Rule 7056 of the Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P."); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). It appears from a review of the papers that the only disputed question before the court relating to the Trustee's motion for summary judgment is a matter of legal interpretation.

Under the "strong arm" provisions of § 544(a) of the Code, the trustee has the power to avoid any claims that could be avoided by a hypothetical judicial lien creditor under state law. *See In re Vienna Park Properties*, 976 F.2d 106, 115 (2d Cir. 1992). New York's version of the Uniform Commercial Code, in turn, allows lien creditors-- and thus the bankruptcy trustee-- to defeat unperfected security interests in Article 9 property. New York Uniform Commercial Code ("NYUCC") § 9-301(1)(b) (McKinney 1990 & 1998 Supp.). It is undisputed that neither the Baiers nor McDermott ever perfected a security interest in the mobile home in accordance with NYUCC § 9-302(1)(d).

As a matter of New York law, there is a presumption that documents are in fact what they purport to be. *See George Backer Mgt. Co.. v. Acme Quilting Co., Inc.*, 46 N.Y.2d 211, 220,

385 N.E.2d 1062, 1066, 413 N.Y.S.2d 135, 139 (N.Y. 1978). The Contract clearly presents itself as a transfer of ownership combined with the reservation of an Article 9 security interest. The defendants have not raised, nor is the Court able to discern, any ambiguity in the text of the document that might support a different interpretation.

Nevertheless, the Defendants attempt to place their rights beyond the reach of Article 9 by insisting that Bryson's interest in the mobile home did not amount to ownership. *See* McDermott's Third Party Complaint at ¶5. Defendant and Third-Party Defendants have offered to prove by parol evidence that at the time of the execution of the Baier-Debtor contract, both sides understood that the Baiers would retain title to the mobile home, and that the complete absence of such a term from the contract was a mutual mistake. On these grounds, both defendants have demanded that the Court disregard the contract's integration clause and reform the agreement to reflect what are alleged to be the parties' actual intentions. The Court need not address these arguments, however. Even if the changes urged by the defendants were to be written into the Contract, McDermott would have no defense to Trustee's superior rights under New York law.

Although McDermott and the Baiers have vigorously argued for reformation of the contract, their pleadings give little indication of what terms the reformed contract might have. According to William Baier's affidavit, both parties agreed that the Baiers would retain title until Debtor completed payments. Baier does not allege that the Contract was in the nature of a lease or an option, nor does he allege that the retention of title was intended other than for security, nor does he otherwise dispute the terms of the Contract. Thus, the Baiers' allegations are at best sufficient to prove that the parties intended to enter into a conditional sale, under which the seller

retains title until the buyer completes payment on the goods. BLACK'S LAW DICTIONARY 287 (5th ed. 1979). Conditional sales of personal property and fixtures, however, are specifically made subject to Article 9 of the U.C.C., and attempted reservations of title in a conditional sale are legally effective only as reservations of security interests. NYUCC §§ 1-201(37), 2-401, 9-102(2) (McKinney 1992 & 1998 Supp). Accordingly, McDermott has alleged no genuine issue of material fact under Fed.R.Civ.P.56(c) and Fed.R.Bankr.P. 7056, and the Trustee is entitled to summary judgment. *See Bryant v. Maffucci*, 923 F.2d 979, 982 (2d Cir. 1991), *cert. denied*, 502 U.S. 849, 112 S.Ct. 152, 116 L.Ed.2d 117 (1991). ("Once the moving party has made a properly supported showing sufficient to suggest the absence of any genuine issue as to material fact, the nonmoving party, in order to defeat summary judgment, must come forward with evidence that would be sufficient to support a jury verdict in his favor.")

II. Third Party Defendant's Motion for Summary Judgment

New York courts grant the remedy of contract reformation only where a change would add to or detract from the parties' rights. *See Alteri v. Heenan*, 96 A.D. 2d 981,982, 466 N.Y.S.2d 835, 836 (N.Y.App.Div. 1983). As noted above, the only reformation plausibly supportable by the movants' pleadings would be a change from a traditional security agreement to a conditional sale. As these two devices are treated identically under applicable law, the position of the parties could not be changed by the granting of this relief.

For the same reasons, a sua sponte grant of summary judgment in favor of the Trustee and Debtor on the Baiers' motion is appropriate. The Second Circuit has recognized that sua sponte grants of summary judgment are appropriate where it is clear that the case does not present an

issue of material fact. *See Project Release v. Prevost*, 722 F.2d 960, 969 (2d Cir. 1983). This power is limited by the principle that the party against whom summary judgment is granted must have had an adequate opportunity to present materials in opposition to the motion. *See FLLI Moretti Cereali S.p.A. v. Continental Grain Co.,* 563 F.2d 563, 565 (2d Cir. 1977). As discussed above, since the effect of the Baiers' proposed reformation is rendered a nullity by the Uniform Commercial Code, the reformation action must fail as a matter of law. In addition, in light of the their own motion for summary judgment, the Court finds that the Baiers have had an adequate opportunity to litigate this issue. For these reasons, the Court denies the Baiers' motion for summary judgment on the Cross Claim and grants summary judgment on the Cross Claim to the Trustee and Debtor.

III. Defendant McDermott's Third Party Complaint

As a final matter, the Court must also consider sua sponte its subject matter jurisdiction over the last remaining part of this adversary proceeding, McDermott's Third Party Complaint against the Baiers. Under 28 U.S.C. §1334, "bankruptcy courts have no jurisdiction over proceedings that have no effect on the debtor." *Celotex Corp v. Edwards*, 574 U.S. 300, 308, 114 S.Ct. 1493, 1499, 131 L.Ed.2d 403 at n.6 (1995). In the present case, McDermott's success or failure on his state law claim against the Baiers will have no effect on the property or legal rights of the estate. Accordingly, McDermott's Third Party Complaint is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated at Utica, New York

this 28th day of August 1998

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STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge